IN THE

Supreme Court of the United States

October Term, 1971

No. 71-769

THE MORNING TELEGRAPH, a Division of TRIANGLE PUBLICATIONS, Inc.,

Petitioner.

vs.

BERTRAM A. POWERS, individually and as President, THOMAS W. KOPECK, individually and as Secretary Treasurer, DAVID CROCKETT, individually and as Vice President, of New York Typographical Union No. 6, International Typographical Union, an unincorporated voluntary association and "JOHN DOE and RICHARD ROE" and all other persons employed by the plaintiff who are members of New York Typographical Union No. 6, International Typographical Union, and the New York Typographical Union No. 6, International Typographical Union,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Attorney for Respondents

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This Court in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U. S. 235, said:

"Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-

> La Guardia Act. We deal only with the situation in which a collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. The dissenting opinion in Sinclair suggested the following principles for the guidance of the district courts in determining whether to grant injunctive relief—principles which we now adopt" (pp. 253-4).

Concededly, the contract in the instant case does not contain a mandatory grievance adjustment or arbitration procedure. Petition, Question Presented, p. 3.

It does not appear that the instant dispute, as found in the opinion of the Court below, is within the exclusive jurisdiction of the National Labor Relations Board. Even if that Board were deemed to have exclusive jurisdiction of such dispute, the Petitioner has as equal access to the Board as the Respondents may have, 29 U. S. C. 159 (c). Further, if the conduct of the Respondents constitutes an unfair labor practice, 29 U. S. C. 158 (b) (4) (D), the Board itself may seek temporary injunctive relief in a federal district court, 29 U. S. C. 160 (k).

Thus, the Petitioner has within its power the opportunity to have the National Labor Relations Board pass upon the merits of the dispute, and that Board has the power to seek injunctive relief.

CONCLUSION

In these circumstances, it is submitted that this Court should not enlarge upon the area in which injunctions may issue as set forth in *Boys Markets* and it should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

JOHN J. SHEEHAN,
Attorney for Respondents,
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New York, N. Y. 10007.

AFFIDAVIT OF SERVICE

State of New York
County of New York—ss.:

JOHN J. SHEEHAN, being duly sworn, deposes and says that he served the foregoing Respondents' Brief in Opposition upon the attorneys for petitioner herein, on January 27, 1972 by mailing three true and correct copies thereof, postpage prepaid to Harold E. Kohn and Aaron M. Fine at 1214 IVB Building, 1700 Market Street, Philadelphia, Pennsylvania 19103 and Caesar L. Pitassy and Richard N. Winfield at 200 Park Avenue, New York, New York 10017, attorneys for petitioner.

JOHN J. SHEEHAN

Sworn to before me this
27th day of January, 1972

CONRAD P. SHEEHAN
Notary Public, State of New York